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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

IN RE GOOGLE PLAY CONSUMER	)	
ANTITRUST LITIGATION.	)	
	)	NO. C 20-05761 JD
	)	
	)	
	)	
	)	NO. C 20-07379 JD
AND RELATED CASES.	)	C 20-07824 JD
	)	C 20-07984 JD

San Francisco, California  
Tuesday, December 15, 2020

**TRANSCRIPT OF PROCEEDINGS BY ZOOM WEBINAR**

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Tuesday - December 15, 2020

11:00 a.m.

P R O C E E D I N G S

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**THE CLERK:** Calling Civil 20-5761, In Re Google Play Consumer Antitrust Litigation; Civil 20-7379, Carroll vs. Google LLC; Civil 20-7824, Roberts vs. Google LLC; and Civil 20-7984, Gamble, et al., vs. Google LLC.

Counsel for the defendant, please state your appearance.

**MR. ROCCA:** Good morning, Ms. Clark. Hello, Your Honor. Brian Rocca of Morgan Lewis representing Google defendants.

**THE COURT:** Okay. Mr. Rocca, I'm expecting you will be a silent participant for most of the day, but thank you for being here.

**THE CLERK:** Counsel for the plaintiff, Albert Chang.

(Pause in proceedings.)

**THE CLERK:** You need to unmute yourself.

**MR. CHANG:** Good morning, Your Honor. I'm Albert Chang with the law firm of Bottini & Bottini in San Diego appearing on behalf of plaintiff Amos Kober.

**THE CLERK:** Peggy Wedgworth.

**MS. WEDGWORTH:** Good morning, Your Honor. Peggy Wedgworth from Milberg Phillips Grossman on behalf of plaintiff consumer Bentley and the consumer class.

**THE COURT:** Hae Sung Nam.

1           **MS. NAM:** Good morning, Your Honor. Hae Sung Nam with  
2 Kaplan Fox for the Herrera plaintiffs.

3           **THE COURT:** Robert Kaplan.

4           **MR. KAPLAN:** Robert Kaplan, Kaplan Fox & Kilsheimer  
5 LLP, for the Herrera plaintiffs.

6           **THE CLERK:** Elizabeth Pritzker.

7           **MS. PRITZKER:** Good morning, Your Honor. Elizabeth  
8 Pritzker, Pritzker Levine, on behalf of the plaintiffs in the  
9 Carroll vs. Google litigation.

10          **THE CLERK:** Andre Mura.

11          **MR. MURA:** Good morning, Your Honor. Andre Mura from  
12 Gibbs Law Group on behalf of the Gamble plaintiffs.

13          **THE CLERK:** Jamie Boyer.

14          **MS. BOYER:** Good morning, Your Honor. Jamie Boyer  
15 from Korein Tillery on behalf of plaintiff Mary Carr.

16          **THE CLERK:** Glen Summers.

17          **MR. SUMMERS:** Good morning, Your Honor. Glen Summers  
18 on behalf of Bartlit Beck on behalf of plaintiff Carr.

19          **THE CLERK:** Nanci Nishimura.

20          **MS. NISHIMURA:** Good morning, Your Honor.  
21 Nanci Nishimura, Cotchett, Pitre & McCarthy, on behalf of  
22 plaintiff Brian McNamara.

23          **THE CLERK:** Adam Zapala.

24          **MR. ZAPALA:** Good morning, Your Honor. Adam Zapala,  
25 Cotchett Pitre & McCarthy, on behalf of plaintiff McNamara.

1           **THE CLERK:** Maribeth Annaguey.

2                               (No response.)

3           **THE CLERK:** Maribeth Annaguey.

4           **MS. ANNAGUEY:** Good morning, Your Honor.

5 Maribeth Annaguey on behalf of Ashly Esquivel and the plaintiff  
6 class.

7           **THE CLERK:** Karin Swope.

8           **MS. SWOPE:** Good morning, Your Honor. This is  
9 Karin Swope from Keller Rohrback representing the plaintiff  
10 Jared Stark.

11           **THE CLERK:** Rick Saveri.

12           **MR. SAVERI:** Good morning, Your Honor. May it please  
13 the Court, Rick Saveri from Saveri & Saveri on behalf of the  
14 Roberts complaint.

15           **THE CLERK:** And Sarah Van Culin.

16           **MS. VAN CULIN:** Good morning, Your Honor. Sarah  
17 Van Culin of Saveri & Saveri on behalf of the Roberts  
18 plaintiff.

19           **THE CLERK:** That's everyone, Your Honor.

20           **THE COURT:** Okay. Well, I was looking for  
21 Ms. Giulianelli. Is she not joining us today?

22           **THE CLERK:** What's her name?

23           **THE COURT:** Giulianelli.

24           **MR. SUMMERS:** Your Honor, I'm her partner, Glen  
25 Summers here, and I'll be handling the argument for

1 Bartlit Beck.

2 **THE COURT:** Okay. Well, that's not going to really be  
3 working for me. I'm appointing lawyers, not law firms. So is  
4 Ms. Giulianelli here?

5 **THE CLERK:** What's her first name, Judge? Is it --

6 **THE COURT:** Karma. I think it's --

7 **THE CLERK:** Okay. I see her. I'll move her over.

8 **THE COURT:** Okay.

9 **MR. SUMMERS:** Thank you, Your Honor.

10 **THE COURT:** And also Mr. Zelcs.

11 **THE CLERK:** I don't see Mr. Zelcs.

12 **THE COURT:** I do.

13 **THE CLERK:** Do you?

14 **THE COURT:** Yeah.

15 **THE CLERK:** Okay.

16 **THE COURT:** And Elizabeth Castillo from the Cotchett  
17 firm, is she on the line?

18 **MR. ZAPALA:** She's not, Your Honor. She's in a  
19 deposition today. This is Adam Zapala.

20 **THE COURT:** Oh, okay. Hmm.

21 All right. Well, this is an unexpected development. You  
22 know, I'm not appointing law firms. I'm appointing lawyers.  
23 This is lead counsel, not lead law firms. So, you know, the  
24 people who have been presented in the papers I wanted to have a  
25 word with so I'm a little unclear about the status of some of

1 the individuals who put themselves forward in the papers who  
2 are interested in leadership roles who are not here today, and  
3 that puts a little bit of crimp in the program.

4 Also, let me just do one last call on seeing if you are  
5 interested in trying to work this out. I normally defer to the  
6 counsel. You know the case better than I do at this point and,  
7 you know, I'd like to have you arrange things in the way you  
8 think is good; and as long as the proposal to me looks fair and  
9 in the best interest of the putative class, I usually don't  
10 have a problem with it.

11 Now, I gather there's been a little bit of friction. It's  
12 not uncommon. It's not out of control by any means, but I  
13 usually in a typical case don't have to do this. So before I  
14 go any further, let me just ask. Is there any groundswell --  
15 and I shouldn't say "any." Is there a groundswell of interest  
16 in having you-all take one last run at trying to organize this  
17 privately? Anybody?

18 (No response.)

19 **THE COURT:** Okay. Not only is there not a  
20 groundswell, there's not a single lawyer in support.

21 Okay. All right.

22 **MR. KAPLAN:** Yes, Robert Kaplan, Your Honor.

23 I think if you gave us till the end of the week, let us  
24 see if we can reach some kind of agreement, I'd like to try  
25 again. We have had conversations and Ms. Nishimura could also



1 address it.

2 **THE COURT:** Okay. Ms. Nishimura?

3 **MS. NISHIMURA:** Your Honor, good morning.

4 Nanci Nishimura of Cotchett, Pitre & McCarthy. I'm part of the  
5 Cotchett-Kaplan team. We've made many efforts to create a  
6 co-lead relationship, but sadly the Korein-Bartlit group wants  
7 sole control.

8 To the extent we could work it out in a couple of days, we  
9 would do our best because we are here, Your Honor, to recognize  
10 that we must engage in professionalism in a cooperative spirit.  
11 We need to do what's fair and reasonable and in the best  
12 interest of the putative class, and that's what we're  
13 endeavoring to do.

14 To the extent we could encourage other counsel to do so,  
15 we will do that; but I've got three points to make that we've  
16 never -- to try to accomplish here. There's plenty of work.  
17 There's no need to try to seek sole control of this case. We  
18 need to work together because Google is who we're working  
19 together against.

20 Our complaints are different. The reason why the  
21 Cotchett-Kaplan group wants to be part of this leadership team  
22 is because we only have three claims. They have 35 claims  
23 under the laws of 25 states so we need to ensure that our  
24 voices are heard and that we don't get lost.

25 **THE COURT:** Oh, no one is going to get lost. So

1 really the only issue at this point is: Is there a majority  
2 interest shading to super majority? Because I'm willing just  
3 to go ahead and make all the calls right now but if there is a  
4 super majority interest in having you-all take one last shot at  
5 privately ordering it, I'd be open to that.

6 Mr. Kaplan has proposed doing that. Is there anybody else  
7 who is supportive of that? Maybe in the other law firms.

8 (No response.)

9 **THE COURT:** No? Okay. All right.

10 **MR. SAVERI:** Your Honor, I apologize. Rick Saveri for  
11 Roberts.

12 **THE COURT:** Yes.

13 **MR. SAVERI:** I think some time together -- you know,  
14 we're asking to be on a steering committee. I thought that the  
15 conversations that I took part in, which were very recent, were  
16 very fruitful and I thought some movement was made, and I think  
17 it could be useful on that. So I would say a little time  
18 unless others have thoughts.

19 **THE COURT:** All right. Well, let me --

20 **MS. SWOPE:** Karin Swope.

21 **THE COURT:** Let me just pick somebody.

22 Ms. Giulianelli, what do you think? Do you want to have more  
23 conversations, or do you think you're at a decision point for  
24 me?

25 **MS. GIULIANELLI:** Yes. I mean, I think, Your Honor,

1 we have -- and I'm glad I'm on video now so I apologize for not  
2 having been on video.

3 I think that we might have reached already the point -- we  
4 can have more conversations, but we have not been able to reach  
5 an agreement so far. There are actually four of us working  
6 together -- the Korein Tillery, Bartlit Beck, Elizabeth  
7 Pritzker and her firm, and Peggy Wedgworth and her firm -- and  
8 we've already had quite a bit of substantial dealings and work  
9 with the developers and Epic.

10 And so I think that we've been -- there are -- we are  
11 happy to work cooperatively and we are planning to work  
12 cooperatively with the other group so that we can all have a  
13 role in getting the substantial work done, but we don't think  
14 that a huge committee structure with three different leads  
15 makes sense at this point for this case because of all the work  
16 we've already been doing efficiently.

17 **THE COURT:** All right.

18 **MS. GIULIANELLI:** And we'll work with everybody, of  
19 course, in a way that makes sense for the case.

20 **THE COURT:** Yes. Okay.

21 All right. Well, let's just get it done. Time to move  
22 this thing on. Your amended complaint is due in a couple weeks  
23 anyway, isn't it?

24 **MS. GIULIANELLI:** Correct.

25 **THE COURT:** Yeah.

1           **MS. GIULIANELLI:** Correct.

2           **THE COURT:** So the developers are all set and with  
3 their plaintiff-side structure we're going to -- I'm going to  
4 just tell you at the end of this call who I selected. I want  
5 to hear from a couple of people. I have everybody's papers.  
6 They were very detailed. I appreciate all that, and I do want  
7 to ask just a couple of individuals a couple of questions, and  
8 then I will tell you what the structure will be.

9           Now, before I do that, though, just a couple of guiding  
10 principles. One, this is about you, your strengths, your  
11 experience, what you're going to bring to the case. When I  
12 talk to you individually, it is not about why the other person  
13 is not to be trusted with a burnt match. Okay? So we're not  
14 engaging in a comparative winner-loser dialogue. You just talk  
15 to me about you and your team and your experience, and we're  
16 all going to keep it positive. We're not going to have anybody  
17 undercutting each other or slinging mud. I don't need that.  
18 It's not productive and it does not reflect well on the people  
19 who bring that to the table. So please keep that in mind.

20           The second thing is there is going to be a role for more  
21 than three law firms. People are going to have various things  
22 to do. You are going to have to work together. I'm confident  
23 you can. You're all experienced. I think once we get past  
24 today, you'll be able to, you know, link arms and move your  
25 side of the case forward. So that is my expectation.

1        Now, I also, as you know, if you've looked at my -- and  
2        I'm sure you have -- you've looked at my prior orders in this  
3        area, I do not favor -- no judge does -- I do not favor  
4        complicated committee structures whose primary goal is just to  
5        give everybody a little slice of engagement. There will be  
6        plenty of work to do. That doesn't necessarily mean that the  
7        leadership team, which is what we're going to appoint today,  
8        needs to be sliced into 16 pieces. That usually is not  
9        efficient.

10       So I am going to appoint today lead counsel, probably two,  
11       co-lead counsel; and a liaison counsel who, in my view, is  
12       going to have a very important role in making sure that the  
13       trains leave the station on time, among other tasks; and I'm  
14       also going to appoint a steering committee of additional  
15       members that will supplement the liaison counsel and the two  
16       co-lead counsel, and I'll probably do three other steering  
17       committee members. And I'm going to let you know all that  
18       today as soon as we get through the first questions.

19       Let me start with Ms. Giulianelli. Am I saying your name  
20       correctly?

21       **MS. GIULIANELLI:** You are. That's very good. It's  
22       like two girls' names, Julie and Ellie. So that's perfect.

23       **THE COURT:** My name also ends in a vowel so I have  
24       some experience --

25       **MS. GIULIANELLI:** Yes.

1           **THE COURT:** -- with your name structure.

2           Okay. Tell me a little bit about what else you have done  
3 on the plaintiffs' side in situations like this where you have  
4 worked with a variety of different plaintiffs' firms.

5           **MS. GIULIANELLI:** On the plaintiffs' side, we have  
6 worked -- we've never been, Your Honor, in a class action on  
7 the plaintiffs' side, but we've had plenty of cases where we  
8 have been plaintiffs working with other firms in commercial and  
9 other disputes, and including plaintiffs' side class actions as  
10 opt-outs -- excuse me -- plaintiffs' side antitrust actions,  
11 and we have worked as opt-outs with multiple firms in such  
12 antitrust actions. And of course we've had various plaintiffs'  
13 side cases.

14           **THE COURT:** Let me just jump in. I'm talking about  
15 you, not "we." You, Ms. Giulianelli, not the firm. Okay? We  
16 are hiring lawyers. We are not hiring a firm.

17           **MS. GIULIANELLI:** I have --

18           **THE COURT:** So I'm going to talk about you personally  
19 so take it from the top. What experience have you had  
20 personally? And don't make me say this every time to  
21 everybody. I'm talking about you now. So we're just putting a  
22 marker on the table. What experience have you personally had  
23 with this type of arrangement being interim counsel or class  
24 counsel and working with, you know, steering committees and  
25 liaison counsel, and so on, on the plaintiffs' side?

1           **MS. GIULIANELLI:** On the plaintiffs' side I have not  
2 had experience in class action cases, but I have worked on the  
3 plaintiffs' side in class action cases as an opt-out. So not  
4 representing a class but representing Hewlett Packard in  
5 multiple class action cases, the ODD cases, and the LCD cases  
6 as an opt-out; and that has entailed working, of course, with  
7 other counsel that we worked with as an opt-out and  
8 coordinating with the class to some extent. So that's on the  
9 plaintiffs' side.

10           **THE COURT:** What about just cases where you've been  
11 with a large group of other lawyers outside of your firm? What  
12 kind of experience have you had with that where you've had to  
13 work with people that aren't necessarily in your building and  
14 on your letterhead?

15           **MS. GIULIANELLI:** I've done that. Most of my cases  
16 have been with other firms because that's what we do at  
17 Bartlit Beck. So on the defense side, I have worked with  
18 multiple other firms in a class action case defending Sabre,  
19 and that was a case in the Southern District of New York, and  
20 we had co -- Well, we had co-counsel and we had co-defendants  
21 in that case. So there were numerous firms in that case with  
22 which we worked.

23           And I have also represented companies, Sabre, in cases  
24 where we have paired with defense -- with other firms because  
25 we do that all of the time.

1 And in the last case that went to trial, antitrust case in  
2 which I participated, we had three law firms involved. We were  
3 one of them trying that case. So we have a lot of experience  
4 working with numerous firms in cases of that nature.

5 **THE COURT:** All right. And what do you think -- if  
6 there is one secret to success in teaming with people and  
7 lawyers outside of your own firm in service to a common  
8 interest of either joint client or shared clients, what do you  
9 think is the one secret for success --

10 **MS. GIULIANELLI:** Well, I think communicating --

11 **THE COURT:** -- in making that work?

12 **MS. GIULIANELLI:** I think communication and using  
13 everybody's strengths accordingly. So communicating about one  
14 another's strengths, figuring out who plays which role in the  
15 best way possible depending on what their respective strengths  
16 are and our respective strengths are.

17 **THE COURT:** And what would you do if one of your  
18 outside colleagues just felt very strongly against something  
19 that you wanted to do, say, in discovery or in argument? How  
20 would you handle that?

21 **MS. GIULIANELLI:** Well, we'd communicate about it a  
22 lot and we'd basically have a debate -- and by that I mean a  
23 friendly debate -- to figure out what the pros and cons are of  
24 each side, and we would get as many people involved as  
25 efficient but into the decision to make sure that we have a



1 diversity of points of view and that we've considered all of  
2 the arguments.

3 And so I think it would be, again, communication,  
4 Your Honor, to try to figure out the best outcome. And, in  
5 fact, this is -- we do this a lot because we often work with  
6 co-counsel and Bartlit Beck and me. We're very good at trying  
7 to figure out -- you know, these cases are hard cases, and so  
8 we do what we can to try to hear all sides. And, you know,  
9 usually we come to a resolution, and it's the best resolution  
10 for the client. Once we talk everything out, we usually end up  
11 agreeing on the best substantive path forward, and it's usually  
12 a good combination of people's thoughts.

13 **THE COURT:** Okay. And last question for you. Just  
14 tell me about your antitrust experience, please.

15 **MS. GIULIANELLI:** So I started at the Department of  
16 Justice in the San Francisco Field Division, and I was one of  
17 the four or five people investigating Microsoft's  
18 Internet-related conduct starting in 1996. We brought a  
19 consent decree case in '97. Then we brought the monopolization  
20 case out of the San Francisco Field Office, and I was one of  
21 the core people who drafted the complaint in '98 and brought  
22 the case. That case went to trial in the spring of '98, and I  
23 spent a full year in D.C. on -- 10 months, it seemed like a  
24 year -- on the trial team in Washington, D. C.

25 **THE COURT:** That was judge --

1           **MS. GIULIANELLI:** That was Judge Jackson.

2           **THE COURT:** Judge Jackson, yes. Yeah. Go ahead.

3           **MS. GIULIANELLI:** Penfield Jackson.

4           And so I was part of the core trial team in that case.

5           And then after that case in 1999, I moved to Bartlit Beck  
6           where I've done a substantial amount of antitrust work both on  
7           the plaintiffs' side representing Hewlett Packard in various  
8           cases and of course on the defense side. So on the defense  
9           side in the last 10 -- well, in the last 10 years, I've  
10          represented Sabre in four separate antitrust cases. I've  
11          represented OtterBox in an antitrust case in Colorado and I got  
12          all the antitrust claims dismissed.

13          But I've tried two cases for Sabre. One of them settled  
14          during trial and the other one went to a jury verdict in *Sabre*  
15          *vs. U.S. Airways*. So I've tried multiple antitrust cases.

16          **THE COURT:** Okay. Thank you.

17          All right. Let me move to Mr. Zelcs. Am I saying that  
18          correctly? You need to unmute yourself.

19          **MR. ZELCS:** My apologies, Your Honor. Good morning.  
20          You are saying it correctly.

21          **THE COURT:** Good morning.

22          Okay. All right. Were you not planning on making a court  
23          appearance today? You look rather casually dressed.

24          **MR. ZELCS:** I apologize for that. I was not planning  
25          on speaking today. I expected that to be handled by

1 Mr. Summers and Mrs. Giulianelli.

2 **THE COURT:** Well, as I said, I'm looking for lawyers  
3 and not for firms so it's fine for right now.

4 Okay. Mr. Zelcs, you've heard what I asked  
5 Ms. Giulianelli so let me just recap that. So what has your  
6 experience been working on plaintiffs' side structures like  
7 this with lead counsel, liaison counsel, steering committees?

8 **MR. ZELCS:** My first experience would have been  
9 appointed co-lead in an MDL involving Motor Fuel Temperature  
10 Litigation back in 2008 in front of Judge Vratil in Kansas,  
11 three-way co-lead steering committee of about eight people; and  
12 there were -- I believe there were 58 lawsuits filed.  
13 Essentially most of them were copycats after we filed the  
14 initial case there.

15 Second, an additional experience is working in the Foreign  
16 Exchange Antitrust Litigation that's still pending in front of  
17 Judge Schofield. Fifteen defendants have settled. One is  
18 still pending, Credit Suisse. We have been working with  
19 co-leads, Hausfeld and Scott & Scott, and we've been the third  
20 firm that's been involved in both doing substantial work and  
21 also providing financing for the case.

22 I've also been involved -- I am currently involved in  
23 another antitrust case involving the bond market that's pending  
24 in front of Judge Liman in New York. We also just completed  
25 the GSE case in front of Judge Rakoff in New York. That

1 settled a couple of month ago. The co-leads there were Lowey  
2 Dannenberg and Scott & Scott, and we worked with them as well.

3 An additional case that I've spent a long time working on,  
4 not in the class context but with another law firm that was  
5 also selected by the NCA, a government agency, where we  
6 litigated mortgage-backed security cases in 16 different cases  
7 for them, recovered about 5.5 billion to date.

8 Those are probably the best examples of working in class  
9 actions with other law firms or with other law firms in large  
10 direct actions.

11 **THE COURT:** I'm glad you mentioned financings. I  
12 forgot to ask Ms. Giulianelli this, but let me ask you this  
13 first.

14 So we now have the Northern District -- we have a local  
15 rule, Local Rule 3-15, which requires the disclosure of parties  
16 interested or who may have a financial interest in the outcome  
17 of a case, and we now have a standing order -- I think we were  
18 the first district court in the country to do this -- where  
19 litigation funding does have to be disclosed as part of the  
20 Rule 3-15 disclosures.

21 So, Mr. Zelcs, are you anticipating that you'll be making  
22 a litigation funding disclosure?

23 **MR. ZELCS:** Your Honor, we will not. We self-fund all  
24 of our cases.

25 **THE COURT:** Okay. And, Ms. Giulianelli, what about

1 you? Do you think you'll be making a litigation funding  
2 disclosure?

3 **MS. GIULIANELLI:** The same, Your Honor. We will not  
4 be.

5 **THE COURT:** Okay. All right.

6 And, Mr. Zelcs, you've had a lot of experience in  
7 situations like this. What do you think the secret is for  
8 making it work?

9 **MR. ZELCS:** Identifying which lawyers are best at  
10 doing specific things and communicating with everybody.

11 **THE COURT:** Okay. And when you've had problems and  
12 differences of opinion and strategy and tactics, how have you  
13 worked that out?

14 **MR. ZELCS:** If it's a difference of views between two  
15 people, you involve a larger group, try to get a consensus.  
16 That usually works.

17 **THE COURT:** Okay. Thank you.

18 All right. Let me -- I was hoping to talk to Ms. Castillo  
19 because I have an interest in a role for her in this case, but  
20 I guess she's not available.

21 Let me --

22 **MR. ZAPALA:** Your Honor, actually -- this is Adam  
23 Zapala -- she's on a break so she did join the Webinar. I  
24 don't know if she can be promoted to --

25 **THE COURT:** Oh. I see a hand. I see a blue hand.

1 Let me see if I can bring her up.

2 Oh, yes, there she is. Okay.

3 **MR. ZAPALA:** I moved over, Judge.

4 **THE COURT:** Okay. Great.

5 **MS. CASTILLO:** Good morning, Your Honor.

6 **THE COURT:** How are you? So I take it you're video  
7 free right now, Ms. Castillo?

8 **MS. CASTILLO:** I just joined the video.

9 **THE COURT:** Ah, there you are. Good. Okay.

10 Are you doing a deposition?

11 **MS. CASTILLO:** I am, but I'm on a break so I just  
12 chose to join.

13 **THE COURT:** All right. Well, I know I moved this up  
14 so I know that might have created some scheduling issues, but  
15 your background caught my eye. I wanted to ask you a little  
16 bit. Just tell me a little bit more about your antitrust  
17 background on the plaintiffs' side.

18 **MS. CASTILLO:** Sure. I've been practicing antitrust  
19 law for the past nine years. I have worked on the In Re  
20 Automotive Parts Antitrust Litigation. It's a sprawling MDL  
21 based in the Eastern District of Michigan. It encompasses 41  
22 cases.

23 I have also worked on other MDLs, the Domestic Airline  
24 case based in D.C., In Re Transpacific Passenger Air in the  
25 Northern District, also Capacitors/Resistors. I know

1 Capacitors -- well, Resistors isn't an MDL, but these were all  
2 complex antitrust cases involving multiple parties on each  
3 side.

4 **THE COURT:** Have you ever had, you know, a so-called  
5 leadership position, like on a steering committee or liaison  
6 counsel or anything like that?

7 **MS. CASTILLO:** Not me personally, but all the cases I  
8 mentioned my firm was either lead or co-lead in those cases.

9 **THE COURT:** Okay. And if you had, say, a steering  
10 committee position or liaison counsel position, what do you  
11 think you would like to do in that role to make things work for  
12 the plaintiffs?

13 **MS. CASTILLO:** You know, I have a lot of experience  
14 settling cases, especially in auto parts. My firm and  
15 specifically me was really involved with settling with at least  
16 half of the 73 defendants in that case. So we're really strong  
17 there. We have really, really solid discovery experience.

18 **THE COURT:** I'm talking about you now. I'm talking  
19 about Ms. Castillo, not your firm.

20 **MS. CASTILLO:** Yes. Me.

21 **THE COURT:** What would you like to do? You've had  
22 about 10 years' worth of experience. You've seen how  
23 committees in antitrust cases go, and probably have some ideas  
24 on how things worked out well and maybe how they didn't work  
25 out well. I'm just trying to get a sense of if you were in a

1 leadership position, what do you think you might be interested  
2 in accomplishing on behalf of the plaintiffs with the group?

3 **MS. CASTILLO:** You know, I've personally had a lot of  
4 experience taking depositions and doing offensive discovery.  
5 So those would be my strong suits and whether it's PSC or  
6 liaison counsel, it doesn't matter that much to me.

7 **THE COURT:** Okay.

8 All right. Ms. Nam, let's start.

9 **MS. NAM:** Good afternoon, Your Honor.

10 **THE COURT:** Good afternoon.

11 Oh, before I forget, I mean, are you anticipating filing a  
12 litigation funding third-party disclosure of any sort?

13 **MS. NAM:** No.

14 **THE COURT:** Okay. So Kaplan would just chip in on its  
15 own; is that right?

16 **MS. NAM:** That's right. Kaplan Fox self-funds.

17 **THE COURT:** All right. It looks from your papers that  
18 you've had a substantial amount of antitrust background. Can  
19 you tell me a little bit more about that?

20 **MS. NAM:** Sure. I started at Kaplan Fox in 1999, and  
21 one of my first cases was a class action plaintiffs' side  
22 antitrust case. It was Flat Glass. It was a price fixing  
23 case. I worked on that case for a few years.

24 I've also worked -- throughout my career at Kaplan Fox I  
25 have worked on various antitrust matters for the plaintiffs'



1 side -- for class action on the plaintiffs' side, including  
2 high fructose. I've done some work in that case. I  
3 recently -- I was recently working on a case in Keurig. That  
4 case recently settled and that was for indirect purchasers.

5 **THE COURT:** Oh, the little coffee things?

6 **MS. NAM:** Yeah, the little coffee things. It was a  
7 monopoly tying case. So it wasn't -- it was a Sherman Act 2  
8 case.

9 **THE COURT:** Oh.

10 **MS. NAM:** And it was --

11 **THE COURT:** Sherman Act 2 case against the little  
12 coffee things. Wow.

13 **MS. NAM:** Right.

14 **THE COURT:** Interesting.

15 **MS. NAM:** It was. It was basically they had a patent  
16 and that patent expired, and then they tried to redesign their  
17 lid so the Keurig machines would only read the Keurig cups. It  
18 was an interesting case.

19 So I've had a great deal of antitrust experience on the  
20 plaintiffs' side through my work at Kaplan Fox.

21 **THE COURT:** And what about committee structures,  
22 committee roles, lead counsel roles?

23 **MS. NAM:** You know, I have never been individually  
24 selected for a role, a committee role or a lead role. You  
25 know, it's kind of been a new thing.

1 I've done a lot of securities work, and in securities  
2 class actions the firms are generally selected as the lead.  
3 And I know that in antitrust actions individual -- some judges  
4 in some courts select individuals to lead, and I haven't had  
5 the opportunity to do that.

6 **THE COURT:** All right. But you're interested in doing  
7 that?

8 **MS. NAM:** Yes, I am, sir.

9 **THE COURT:** What do you think -- just looking back in  
10 your experience, what do you think your -- what would be the  
11 one thing that you think would make a multioffice team work  
12 well?

13 **MS. NAM:** I think the one thing is probably respect.  
14 We're all there to work on behalf of a class. We're all  
15 capable attorneys. We all have something to contribute, and I  
16 think acknowledging that and working with each other with that  
17 in mind, I think that helps. I think that makes it an easier  
18 work environment for everyone involved.

19 **THE COURT:** Okay. All right. Thank you.

20 Ms. Nishimura, let me have a couple of words with you.  
21 Can you tell me a bit more about your antitrust background?

22 **MS. NISHIMURA:** I started with the Cotchett firm in  
23 2002. Prior to that, I did work on securities and antitrust  
24 cases with the Cotchett firm. I was involved with the Natural  
25 Gas Antitrust Litigation involving I think 20 public entities

1 and private companies that went on for a number of years.

2 I handled -- I was -- I ran the Bond Insurance Antitrust  
3 Litigation. That involved 26 public entities against bond  
4 insurance companies and the credit rating agencies.

5 I also was in charge of, if you recall, the municipal  
6 derivative litigation that was MDL'd in New York. I  
7 represented more than two dozen entities in New York and  
8 California. We were the individual actions that were  
9 consolidated with dozens of class actions so we had a seat at  
10 the table with the class counsel, and we coordinated everything  
11 that we did, including working with our individual plaintiffs  
12 because they were also class members; and in the event there  
13 was a settlement, we had to coordinate all of that. So I was  
14 always communicating with class counsel. We had an equal role  
15 in court.

16 Similarly, I'm currently running the London InterBank  
17 Offered Rate, the LIBOR litigation, if you recall the global  
18 debacle of the benchmark interest rate-rigging case in the  
19 United States. I currently represent 14 public entities. We  
20 are individual actions, but we're also consolidated with dozens  
21 and dozens of class actions in the MDL in New York. Those are  
22 also antitrust cases, and in those cases I have to coordinate  
23 everything that my individual plaintiffs do with the I think  
24 there's more than three dozen class cases because my clients  
25 are also members of various classes or subclasses.

1 In addition, I'm working with the Attorneys General --  
2 there are a couple dozen Attorneys General who started to  
3 investigate -- and the Department of Justice.

4 So it's dealing with a multilevel chess game sometimes  
5 with your eyes shut or your hands in the black box and learning  
6 to work with all these various entities, law firms, different  
7 courts, and making it move for the client.

8 **THE COURT:** Okay. I appreciate that.

9 And what do you think -- if you had to pick one thing that  
10 makes that a happy relationship and productive for the  
11 plaintiffs, what do you think that would be?

12 **MS. NISHIMURA:** I think it's what everybody here has  
13 said. One, it's respect, we all respect each other; two, it's  
14 communication; three, it's consensus, like Mr. Zelcs says. If  
15 there's two of us talking, we get the larger group. And  
16 currently in one of my cases we're communicating across the  
17 country with, oh, more than a dozen law firms just to get an  
18 idea of how to take the next steps.

19 Like Ms. Castillo said, in discovery some of the  
20 plaintiffs' groups have been allowed to do discovery with the  
21 Department of Justice or with a certain group or subgroup of  
22 defendants and in coordinating that, how do you do that? You  
23 have to communicate.

24 One thing I will say is the difference between the class  
25 cases and the individual actions in these antitrust cases is

1 that in the individual actions, I'm duty bound to communicate  
2 with my clients all of the time. So I also have that where I  
3 write reports to them every month, and I let them know what's  
4 going on with their case. And I keep good records. And it's  
5 like you said in your order, keeping hours. Even though some  
6 of these are -- most of these are all contingency cases, we  
7 maintain very careful records of our time and our costs every  
8 day, every week, every month so that if or when there's an  
9 audit, we're ready to go.

10 **THE COURT:** Okay. Thank you.

11 And Ms. Pritzker. Where is Ms. Pritzker? Ah, yes.

12 Okay. So it looks like you were involved in the NCAA  
13 cases. Was that here in this district?

14 **MS. PRITZKER:** That's correct. That was in front of  
15 Judge Wilken.

16 **THE COURT:** Okay. And what did you do in those cases?

17 **MS. PRITZKER:** So I came into the case as additional  
18 class counsel in part because, although the case was proceeding  
19 on behalf of college athletes, Division I athletes, in  
20 basketball -- women's basketball, men's basketball, and  
21 football, there weren't actually any women basketball players  
22 in the case; and so I worked hard to develop client  
23 relationships with former college basketball players, brought  
24 them into the case, and then worked the case through discovery.

25 My biggest role I think in that case was developing the

1 economic modeling -- working with the experts in developing the  
2 economic modeling for the damages class, which required us  
3 subpoenaing -- you know, issuing subpoenas to 132 Division I  
4 schools across the nation and enforcing those subpoenas and  
5 collecting that data and then digesting it and working with the  
6 experts to provide damages models.

7 I litigated the case through class certification. I  
8 participated in the injunctive relief trial, although I will  
9 admit in the trial area I had a very modest role, although my  
10 client did testify as part of injunctive relief trial in front  
11 of Judge Wilken and I did attend every day of that trial and  
12 worked with the trial team on strategy and trial-related  
13 matters.

14 **THE COURT:** Okay. And are you anticipating filing any  
15 kind of a litigation or third-party funding disclosure?

16 **MS. PRITZKER:** We do not use litigation funding. We  
17 have never done it in our firm and we have no intention to do  
18 so. We also self-fund.

19 **THE COURT:** Ms. Nishimura, I forgot to ask you that.  
20 Are you planning on filing anything like that?

21 **MS. NISHIMURA:** No, Your Honor. We are self-funded.

22 **THE COURT:** Okay. And, Ms. Pritzker, what other  
23 antitrust background have you had?

24 **MS. PRITZKER:** Well, you know, I've been a member of  
25 the bar for 30 years. More than 20 of those years have been in

1 the area of complex litigation. Some of the matters in the  
2 Northern District in which I've participated in antitrust cases  
3 are the *Il Fornaio* case, which was a mesquite charcoal price  
4 fixing case that was in front of Judge Alsup that resolved  
5 short of trial. Judge Alsup appointed me as sole class counsel  
6 in that case.

7 I was liaison counsel in this district in the LCDs case,  
8 which was part of a larger role than a liaison title actually  
9 suggests. I participated very actively in that case through  
10 discovery, through motion practice, and even a little bit at  
11 trial at the end of the day.

12 Again, there's the NCAA case that you referenced. That's  
13 in this district.

14 Outside of this district I've been active in a lot of  
15 antitrust matters. I'm currently co-lead counsel in a case in  
16 the Middle District of Pennsylvania involving price fixing and  
17 tying arrangements of specialty copper press fittings. That  
18 case is set for final approval hearing on Thursday.

19 I'm also co-lead counsel in the EpiPen antitrust  
20 litigation, which is pending in front of Judge Crabtree in the  
21 District of Kansas.

22 **THE COURT:** Oh.

23 **MS. PRITZKER:** It's slated to go to trial in April of  
24 this year --

25 **THE COURT:** Okay.

1           **MS. PRITZKER:** -- or April of next year I should say.

2           **THE COURT:** Which courthouse is that in Kansas?

3           **MS. PRITZKER:** It is in the Kansas City courthouse.

4           **THE COURT:** Kansas City, okay.

5           **MS. PRITZKER:** Yes.

6           **THE COURT:** Okay. I know Judge Crabtree.

7           Okay. And then let me -- this is the last person I need  
8           to -- or I'd like to direct questions to. Ms. Wedgworth.

9           **MS. WEDGWORTH:** Good morning, Your Honor.

10          **THE COURT:** Good morning. Tell me a little bit more  
11          about your antitrust background.

12          **MS. WEDGWORTH:** So I currently serve as lead counsel  
13          in a case in the Northern District of Illinois in front of  
14          Judge Dow, and in that case I represent a nationwide class of  
15          automobile dealerships who were suing the two software  
16          companies who provide data management services to auto  
17          dealerships. And in that case we have settled on behalf of the  
18          dealers with one of the defendants leaving one remaining  
19          defendant.

20          The case has been going for two and a half years. We have  
21          done over 90 depositions. There are also co-counsel involved  
22          concerning competitors who have also sued. So I have -- I am  
23          lead counsel, but I have a PSC, a steering committee, that I  
24          work with and I have certain assignments for them, and we've  
25          worked together well for the past over two and a half years.



1 In addition, the co-counsel who represents competitors,  
2 I've had to work with them in order -- somewhat like Cravath's  
3 role in this case for Epic. You have very similar interests.  
4 Discovery can be completely coordinated. You can eliminate  
5 duplication. All sorts of efficiencies occur when you work  
6 together even though your interests will diverge at some point  
7 and, in fact, there may be some conflict but you have mutual  
8 interests that can facilitate efficiently going forward in the  
9 case.

10 In addition, I'm currently working on some HDD, hard disk  
11 drive, in the district in front of Judge Chesney.

12 I've worked on contact lens in Florida in front of  
13 Judge Schlesinger, and actually Magistrate Klindt has handled  
14 all of our discovery disputes there.

15 I've worked on other antitrust cases. CRT, took a lot of  
16 depositions there in that case.

17 Several other cases in the past. I've also worked on a  
18 lot of Commodity Exchange Act cases through the years, which  
19 are class actions on behalf of those who invest in the futures  
20 market; and many times when we have brought a Commodity  
21 Exchange Act case, we also include antitrust claims as well  
22 even though the Exchange Act claims predominate ultimately in  
23 those cases.

24 **THE COURT:** Now, in that Illinois case where I think  
25 you're lead counsel --

1           **MS. WEDGWORTH:** Yes.

2           **THE COURT:** -- how have you -- what do you think the  
3 secret has been to running a productive and happy steering  
4 committee in relationship with co-counsel?

5           **MS. WEDGWORTH:** I'd say first off hard work. I'd  
6 certainly echo everyone who has said the communication angle;  
7 but I think the strongest point is to identify everyone's  
8 strength, give them the room to develop their strength. If  
9 your thing is depositions, you need to be on the deposition  
10 team; and if your specialty is experts, you need to be on the  
11 expert team. If you are an economist by heart though you  
12 practice law for a day job, you can work with the economists  
13 and really develop that.

14           In this case where I'm lead we've had a real great --  
15 we've had a strong team both internally within the firm and  
16 working with other firms where in that case they were appointed  
17 somewhat like what you're anticipating here. Not that we chose  
18 them but the Court chose them and we've worked together well  
19 over a long period of time. The word "synergy" comes to mind  
20 every project we do from the first deposition to summary  
21 judgment that Judge Dow has said is the largest summary  
22 judgment filing he's ever encountered in his career.

23           **THE COURT:** Okay. Well, I don't want to have to say  
24 that here.

25           **MS. WEDGWORTH:** And hopefully you won't. I've read

1 your standing order that you're not in favor of --

2 **THE COURT:** You can also read my order in *FTC v.*  
3 *D-Link*, D-L-I-N-K, that will give you good guidance on summary  
4 judgment.

5 Ms. Wedgworth, are you planning or anticipating that there  
6 will be a litigation funding disclosure on your behalf?

7 **MS. WEDGWORTH:** Not at this time, Your Honor, no.

8 **THE COURT:** All right. Great.

9 Okay. We're going to take a five-minute break, and I will  
10 be back in five minutes. Thank you.

11 (Recess taken at 11:46 a.m.)

12 (Proceedings resumed at 11:54 a.m.)

13 **THE CLERK:** Okay. We're back on the record in  
14 Civil 20-5761, In Re Google Play Consumer Antitrust Litigation;  
15 Civil 20-7379, Carroll vs. Google LLC; Civil 20-7824, Roberts  
16 vs. Google LLC; and Civil 20-7984, Gamble, et al., vs.  
17 Google LLC.

18 **THE COURT:** All right. Well, thank you, everyone,  
19 both for all the details in the papers, from all the  
20 submissions I have reviewed. It's very useful in our  
21 discussion this morning. It's made things easier for me.

22 Here is how we're going to organize the management end of  
23 the plaintiffs' side. I am appointing Ms. Nam and  
24 Ms. Giulianelli as co-lead counsel. They are the co-lead  
25 counsel for the case as a whole and will be responsible for

1 running it.

2 I'm appointing lawyers, as I said many times today. Of  
3 course they come with law firms, but it is the lawyers who are  
4 going to be running the case; namely, Ms. Nam and  
5 Ms. Giulianelli.

6 I'm going to appoint Ms. Pritzker -- Ms. Pritzker, you're  
7 in Oakland, aren't you?

8 **MS. PRITZKER:** I'm actually in Emeryville but close  
9 enough.

10 **THE COURT:** Emeryville. Okay. You are going to take  
11 on the task of being liaison counsel, which I actually think is  
12 a critical role in the case.

13 And, by the way, I'll do a written order confirming all  
14 this and I'll describe in slightly greater detail what the  
15 expectations will be in terms of performance for the co-lead  
16 counsel, the liaison counsel, and the steering committee; but  
17 it's going to be open-ended. Okay? I'm just setting the  
18 table. You-all are going to take it from here and make this  
19 thing work, and I don't want to put a straitjacket on you. So  
20 this is an architecture. You're going to do the interior and  
21 exterior detail work and build the building.

22 Now, so those three members of the plaintiffs' side will  
23 also be on the steering committee in addition to the following  
24 other members: Ms. Nishimura, Ms. Wedgworth, and Mr. Zelcs.  
25 All right? That will be the steering committee additional

1 members.

2 And you-all are perfectly free to -- as I said, if you  
3 want to develop the committee, do other things, that's fine.  
4 You are at this point aware and you will be even more aware  
5 when I issue my order of appointment explaining all of the  
6 expectations I have for a lean-and-mean efficient litigation.  
7 So you do what you want, but at the end of the day if there are  
8 too many people doing too many things or overlapping with each  
9 other, you won't get paid, just to put it bluntly, if you get  
10 to that point. So that's how that's going to work out.

11 And I also would encourage everybody, since you're all  
12 here, particularly the lawyers that I have just appointed to  
13 management positions for the plaintiffs' side, make sure you  
14 get your less-experienced colleagues into significant  
15 opportunities.

16 I'm just going to use a couple of examples. It's not  
17 meant to be binding in any way or in any way exclusive of  
18 others, but Mr. Jameson Jones, Jamie Boyer, and Elizabeth  
19 Castillo, they all caught my eye with their background. They  
20 may not quite be at the point to have leadership positions, but  
21 I would hope, I'll leave it up to you, it's for you to decide,  
22 but I would hope to see lawyers of that vintage and experience  
23 level and others like them have the opportunity to spread their  
24 wings and fly so that someday they too may be a lead counsel,  
25 liaison counsel, or steering committee member.

1 Okay. That is the disposition. Please get your amended  
2 complaints in on time, and I think that's it.

3 Anything else for today from anyone?

4 **MS. NISHIMURA:** Thank you, Your Honor. Stay safe and  
5 well.

6 **MR. ROCCA:** Happy holidays, everybody.

7 **THE COURT:** Thank you very much.

8 **MS. BOYER:** We look forward to working on this.

9 **ALL:** Thank you, Your Honor.

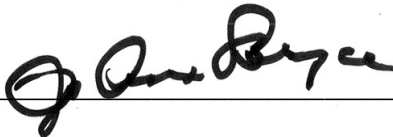
10 (Proceedings adjourned at 11:59 a.m.)

11 ---oOo---

12  
13 **CERTIFICATE OF REPORTER**

14 I certify that the foregoing is a correct transcript  
15 from the record of proceedings in the above-entitled matter.

16  
17 DATE: Tuesday, January 5, 2021

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21   
22 \_\_\_\_\_  
23 Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR  
24 U.S. Court Reporter  
25